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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/797,906	03/09/2004	Masami Suzuki	12587-048001 / D03-047/01	3382
26212 7590 07/23/2009 FISH & RICHARDSON P.C. P.O. BOX 1022 MINNEAPOLIS, MN 55440-1022			EXAMINER DUNHAM, JASON B	
			ART UNIT 3625	PAPER NUMBER
			NOTIFICATION DATE 07/23/2009	DELIVERY MODE ELECTRONIC

**Please find below and/or attached an Office communication concerning this application or proceeding.**

The time period for reply, if any, is set in the attached communication.

Notice of the Office communication was sent electronically on above-indicated "Notification Date" to the following e-mail address(es):

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<b>Office Action Summary</b>	<b>Application No.</b> 10/797,906	<b>Applicant(s)</b> SUZUKI ET AL.	
	<b>Examiner</b> JASON B. DUNHAM	<b>Art Unit</b> 3625	

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

### Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

### Status

- 1) ☒ Responsive to communication(s) filed on 27 April 2009.
- 2a) ☐ This action is **FINAL**.                      2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

### Disposition of Claims

- 4) ☒ Claim(s) 1,38-49 and 52-60 is/are pending in the application.
- 4a) Of the above claim(s) \_\_\_\_\_ is/are withdrawn from consideration.
- 5) ☐ Claim(s) \_\_\_\_\_ is/are allowed.
- 6) ☒ Claim(s) 1,38-49 and 52-60 is/are rejected.
- 7) ☐ Claim(s) \_\_\_\_\_ is/are objected to.
- 8) ☐ Claim(s) \_\_\_\_\_ are subject to restriction and/or election requirement.

### Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on \_\_\_\_\_ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.  
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).  
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

### Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All    b) ☐ Some \*    c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
  2. ☐ Certified copies of the priority documents have been received in Application No. \_\_\_\_\_.
  3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

\* See the attached detailed Office action for a list of the certified copies not received.

### Attachment(s)

- |  |   |
|--|---|
| 1) <input checked="" type="checkbox"/> Notice of References Cited (PTO-892)          | 4) <input type="checkbox"/> Interview Summary (PTO-413)           |
| 2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948) | Paper No(s)/Mail Date. _____                                      |
| 3) <input type="checkbox"/> Information Disclosure Statement(s) (PTO/SB/08)          | 5) <input type="checkbox"/> Notice of Informal Patent Application |
| Paper No(s)/Mail Date _____  | 6) <input type="checkbox"/> Other: _____                          |

## **DETAILED ACTION**

### ***Response to Amendment***

Applicant amended claims 1, 38-40, 43-44, 47-48, and 52-56, canceled claims 50-51, and added new claims 59-60 in the response filed April 27, 2009 in reply to the office action dated March 26, 2009. Claims 1, 38-49, and 52-60 are pending.

Applicant's amendments to independent claim 1 and amendments to claim 52 and cancellation of the disclosure of non-statutory signals as computer readable mediums rendered the previous 35 USC 101 rejections moot.

### ***Claim Rejections - 35 USC § 103***

The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

**Claims 1, 38, 40-43, 45-49, 52-54, and 56- 60 rejected under 35 U.S.C. 103(a) as being unpatentable over Jin (US 2005/0033648) in view of Zeidman (US 2006/0190352).**

Referring to claim 1. Jin discloses a computer implemented method comprising: receiving, at a third party facilitator of a transaction, a file including item description data which describes items, and enhanced data which specifies an approach for conducting the transaction and which supplies value benchmarks for the items (abstract disclosing an online auction listing service, figure 1 disclosing receiving

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client files containing product information, and figure 3 disclosing selling items at price percentages of cost);

monitoring performance of the transaction as the transaction is being facilitated by the third party facilitator over one or more online channels (figure 10 and paragraph 102);

using one or more processors to calculate metrics for the items based on comparing the monitored performance of the transaction to the supplied value benchmarks (paragraph 102 and table 3 disclosing cost recovery for transactions);

Jin discloses all of the above but does not expressly disclose using the calculated metrics and historical transaction data to generate, by the third party facilitator, a recommendation for improving the performance of the transaction, the recommendation suggesting that an auction type, an auction duration period, a price, an ending time, or a quantity and type of items being sold should be adjusted to different values than were specified by the owner of the items, for any remaining portion of the transaction.

Zeidman discloses a computer implemented method using the calculated metrics and historical transaction data to generate, by the third party facilitator, a recommendation for improving the performance of the transaction, the recommendation suggesting that an auction type, an auction duration period, a price, an ending time, or a quantity and type of items being sold should be adjusted to different values than were specified by the owner of the items, for any remaining portion of the transaction

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(Zeidman: abstract and figures 4, 7, and 10 disclosing recommendations on how a seller should optimize the auction of their item)

presenting a dashboard interface to the owner of the items, the dashboard interface providing the calculated metrics and the recommendation of the third party facilitator for improving the performance of the transaction (Zeidman: figure 10);

It would have been obvious to one of ordinary skill in the art at the time of applicant's invention to have modified the method of Jin to have included generating a recommendation by a third party facilitator for improving the performance of an auction, as taught by Zeidman, in order to get a recommendation for seller on the best way to sell their item based on past sales of items (Zeidman: abstract).

The combination of Jin and Zeidman further discloses:

permitting the owner to adjust the approach for conducting the remaining portion of the transaction, using the dashboard interface (Jin: figures 14-15 and paragraphs 111-113); and

facilitating the remaining portion of transaction according to the adjusted approach (figure 16).

Referring to claim 38. The combination of Jin and Zeidman further discloses a method wherein permitting the owner to adjust the approach further comprises permitting the owner to adjust a quantity and type of the items being transacted, responsive to presenting the recommendation of the third party facilitator that the quantity and type of items being sold should be adjusted to different values than were specified by the owner of the items (Zeidman: figure 10 and paragraph 38).

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Referring to claim 40. The combination of Jin and Zeidman further discloses a method comprising re-conditioning the items at a fulfillment center wherein receiving the file further comprises, at the third party facilitator:

receiving an indication from the owner that the items represent fragmented inventory with no associated unique identifier, inventorying the items, assigning unique identifies to the inventoried items, generating the description data, generating the file, and populating the file with the unique identifies and the description data (Jin: figure 15 disclosing inventorying surplus items (such as computers) by SKU number along with description data).

Referring to claims 41-43. The combination of Jin and Zeidman further discloses a method wherein the enhanced data which specifies the approach for conducting the transaction specifies which of the one or more online channels to use in conducting the transaction, how the items should be displayed and sold, and which of the items should be displayed together sale at a same time (Jin: figure 13 disclosing selection of an online channel, selection of a product image, and selection of a category to group the item into).

Referring to claim 45. The combination of Jin and Zeidman further discloses a method wherein the value benchmarks comprise an anchor price for each of the items, and an anchor price flag representing a cost of goods sold (Jin: figure 3).

Referring to claim 46. The combination of Jin and Zeidman further discloses a method wherein the value benchmarks comprise an average sales price per SKU

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associated with each item (Jin: figure 5 disclosing cost recovery rates for items by SKU number).

Referring to claims 47-48. The combination of Jin and Zeidman discloses providing an interface identifying sales reports for listed items (Jin: figure 10). The examiner notes that the contents of the dashboard are non-functional descriptive material. Where the printed matter is not functionally related to the substrate, the printed matter will not distinguish the invention from the prior art in terms of patentability. The critical question is whether there exists any new and unobvious functional relationship between the printed matter and the substrate- In re Gulack, 217 USPQ 401 (Fed. Cir. 1983), In re Ngai, 70 USPQ2d (Fed. Cir. 2004), In re Lowry, 32 USPQ2d 1031 (Fed. Cir. 1994); MPEP 2106.01 II. There is no functional relationship between the display of output information (i.e. providing, identifying, or displaying information) and processing the received information.

Referring to claim 49. The combination of Jin and Zeidman further discloses a method wherein the transaction comprises a sales transaction (Jin: abstract).

Referring to claims 52-54 and 56-60. Medium and system claims 52-58 are rejected under the same rationale provided above in the rejection of method claims 1, 38-42, and 45 (opening prices as a percentage of cost) containing similar limitations).

**Claims 39, 44, and 55 are rejected under 35 U.S.C. 103(a) as being unpatentable over the combination of Jin (US 2005/0033648) in view of Zeidman (US 2006/0190352) in view of Hommrich (US 2002/018042).**

Referring to claim 39. The combination of Jin and Zeidman discloses all of the above but does not expressly disclose a fulfillment center comprising a warehouse. Hommrich discloses a method wherein facilitating a transaction comprises selecting a fulfillment center that is appropriate to the items, based on the description or enhanced data, comprising a warehouse selected from a group including new in box item (Hommrich: abstract and paragraph 79). It would have been obvious to one of ordinary skill in the art at the time of applicant's invention to have modified the method of Jin and Zeidman to have included fulfillment center comprising a warehouse, as taught by Hommrich, in order to select the best location to ship from (paragraph 79). Claim 55 is rejected under the same rationale.

Referring to claim 44. The combination of Jin and Zeidman discloses all of the above but does not expressly disclose specifying whether customer feedback for the owner should be displayed on the one or more online channels. Hommrich discloses specifying whether customer feedback for the owner should be displayed on the one or more online channels (paragraph 56). It would have been obvious to one of ordinary skill in the art at the time of applicant's invention to have modified the method of Jin and Zeidman to have included specifying whether customer feedback for the owner should be displayed on the one or more online channels, as taught by Hommrich, in order to receive and display feedback from auctions (figure 1b and paragraph 50).



***Response to Arguments***

Applicant's arguments with respect to the above claims have been considered but are moot in view of the new ground(s) of rejection.

***Conclusion***

Any inquiry concerning this communication or earlier communications from the examiner should be directed to JASON B. DUNHAM whose telephone number is (571)272-8109. The examiner can normally be reached on M-F, 8-5.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Jeff Smith can be reached on 571-272-6763. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free). If you would like assistance from a USPTO Customer Service Representative or access to the automated information system, call 800-786-9199 (IN USA OR CANADA) or 571-272-1000.

/Jason B Dunham/  
Examiner, Art Unit 3625